Supreme Court, U.S.
FILED
OCT 20 1986
JOSEPH F. SPANIOL, JR.
CLERK

(3)

NO. 86-426

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1986

RICHARD M. MADDOX,
VICKIE ELLEN CALLAHAN,
AND GARY DEAN GILLUM,

PETITIONERS

VS.

STATE OF ALABAMA,

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

APPENDICIES TO THE BRIEF AND ARGUMENT IN OPPOSITION TO THE WRIT

OF

CHARLES A. GRADDICK
ATTORNEY GENERAL

JAMES B. PRUDE
ASSISTANT ATTORNEY GENERAL

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ATTORNEYS FOR RESPONDENT

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APPENDIX A

RELEVANT ALABAMA STATUTES

CODE OF ALABAMA, 1975

TITLE 12

§12-22-130. Appealing judgment of conviction.

A person convicted of a criminal offense in the circuit court or other court from which an appeal lies directly to the supreme court or court of criminal appeals may appeal from the judgment of conviction to the appropriate appellate court.

TITLE 14

§14-9-41. Computation of incentive time deductions.

(a) Each prisoner who shall hereafter be convicted of any offense against the laws of the state of Alabama and is confined, in execution of the judgment or sentence upon any conviction, in the penitentiary or at hard labor for the county or in any municipal jail for a definite or indeterminate term, other than for life, whose

record of conduct shows that he has faithfully observed the rules for a period of time to be specified by this article may be entitled to earn a deduction from the term of his sentence as follows:

(1) Seventy-five days for each 30 days actually served while the prisoner is classified as a Class I prisoner.

(2) Forty days for each 30 days actually served while the prisoner is a Class II prisoner.

(3) Twenty days for each 30 days actually served while the prisoner is a Class III prisoner.

(4) No good time shall accrue during the period the prisoner is classified as a Class IV prisoner.

(b) Within 90 days after May 19, 1980, the commissioner of the department of corrections shall establish and publish in appropriate directives certain criteria not in conflict with this article for Class I, II, III, and IV prisoner classifications. Such classifications shall encompass consideration of the prisoner's behavior,

discipline, work practices and job responsibilities.

(c)(1) Class I is set aside for those prisoners who are considered to be trustworthy in every respect and who, by virtue of their work habits, conduct and attitude of cooperation have proven their trustworthiness. An example of a Class I inmate would be one who could work without constant supervision by a security officer.

(2) Class II is that category of prisoners whose jobs will be under the supervision of a correctional employee at all times. Any inmate shall remain in this classification for a minimum period of six months before being eligible for Class I.

(3) Class III is for prisoners with special assignments. They may not receive any of the privileges of Class I and II inmates. Any inmate shall remain in this classification for a minimum period of three months before being eligible for Class II.

(4) Class IV is for prisoners not yet classified

and for those who are able to work and refuse, or who commit disciplinary infractions of such a nature which do not warrant a higher classification, or inmates who do not abide by the rules of the institution. Inmates who are classified in this earning class receive no correctional incentive time. This class is generally referred to as "flat time" or "day-for-day." Any inmate shall remain in this classification for a minimum period of 30 days before being eligible for Class III.

(5) No inmate may reach any class without first having gone through and meeting the requirements of all lower classifications.

(d) As a prisoner gains a higher classification status he shall not be granted retroactive incentive credit based on the higher classification he has reached, but shall be granted incentive credit based solely on the classification in which he was serving at the time the incentive credit was earned. Nothing in this article shall be interpreted as authorizing an inmate incentive credits based on the highest

classification he attains for any period of time in which he was serving in a lower classification or from the date of his sentence.

(e) Provided, however, no person may receive the benefits of correctional incentive time if he or she has been convicted of a Class A felony or has been sentenced to life, or death, or who has received a sentence for 10 years or more in the state penitentiary or in the county jail at hard labor or in any municipal jail. No person may be placed in Class I if he or she has been convicted of an assault where the victims of such assault suffered the permanent loss or use or permanent partial loss or use of any bodily organ or appendage. No person may be placed in Class I if he or she has been convicted of a crime involving the perpetration of sexual abuse upon the person of a child under the age of 17 years.

The court sentencing a person to prison shall note upon the transcript to accompany such prisoner the fact that he or she has been sentenced as a result of a crime that forbids his or her being classified as a Class I prisoner.

(f)(1) If during the term of imprisonment a prisoner commits an offense or violates a rule of the department of corrections, all or any part of his correctional incentive time accrued pursuant to this section shall be forfeited.

(2) The commissioner of the department of corrections shall have the power to restore any prisoner who has heretofore, or who may hereafter, forfeit the deductions allowed him or her for good behavior, work habits and cooperation, or good conduct, by violating any existing law or prison rule or regulation such portion of his deduction for good conduct or good behavior as may be proper in his judgment, upon recommendation and evidence submitted to him by the warden in charge.

(g)(1) When a prisoner is serving two or more terms of imprisonment and the sentences run consecutively, then all such sentences shall be combined for the purpose of computing deductions for correctional incentive time and release date; however, the actual deduction from sentence for correctional incentive time

provided by this section shall apply only to sentences to be served.

(2) When a prisoner is serving two or more sentences which run concurrently, the sentence which results in the longer period of incarceration yet remaining shall be considered the term to which such prisoner is sentenced for the purpose of computing his release date and correctional incentive time under the provisions of this article. When computing the deductions allowed in this section on indeterminate sentences the maximum sentence shall be the basis for the computation. The provisions of this section shall be administered by the chief administrative officer of the penal institution as it applies to prisoners in any state penal institution, by the sheriff of the county as it applies to prisoners in any county jail and by the chief of police as it applies to prisoners in any municipal jail.

TITLE 15

§15-22-26. Standards for release of prisoners on parole.

No prisoner shall be released on parole merely as a reward for good conduct or efficient performance of duties assigned in prison, but only if the board of pardons and paroles is of the opinion that there is reasonable probability that, if such prisoner is released, he will live and remain at liberty without violating the law and that his release is not incompatible with the welfare of society. If the board shall so determine, such prisoner shall be allowed to go upon parole outside of prison walls and enclosure upon such terms and conditions as the board shall prescribe, but to remain while thus on parole in the legal custody of the warden of the prison from which he is paroled until the expiration of the maximum term specified in his sentence or until he is fully pardoned.

TITLE 20

§20-2-70. Prohibited acts A.

(a) Except as authorized by this chapter, any person who

possesses, sells, furnishes, gives away, obtains or attempts to obtain by fraud, deceit, misrepresentation or subterfuge or by the forgery or alteration of a prescription or written order or by the concealment of material fact or by use of false name or giving a false address controlled substances enumerated in schedules I, II, III, IV and V is guilty of a felony and, upon conviction, for the first offense may be imprisoned for not less than two nor more than 15 years and, in addition, may be fined not more than $25,000.00; provided, that any person who possesses any marihuana for his personal use only is guilty of a misdemeanor and, upon conviction for the offense, shall be imprisoned in the county jail for not more than one year, and in addition, shall be fined not more than $1,000.00; provided further, that the penalties for the subsequent offenses relating to possession of marihuana shall be the same as specified in the first sentence of this subsection.

(b) Any person who violates this section with respect to a counterfeit substance enumerated in schedules I through V is guilty of a felony and, upon conviction for the first offense may be imprisoned for not

less than two nor more than 15 years and may be fined not more than $25,000.00.

ARTICLE 4A.

TRAFFICKING IN ILLEGAL DRUGS

§20-2-80. Trafficking in cannabis, cocaine, etc.; mandatory minimum terms of imprisonment.

Except as authorized in chapter 2, Title 20:

(1) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, in excess of one kilo or 2.2 pounds of cannabis is guilty of a felony, which felony shall be known as "trafficking in cannabis." If the quantity of cannabis involved:

a. Is in excess of one kilo or 2.2 pounds, but less than 2,000 pounds, such person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of $25,000.00.

b. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of $50,000.00.

c. Is 10,000 pounds or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of $200,000.00.

(2) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine or of any mixture containing cocaine, described in section 20-2-25(1), is guilty of a felony, which felony shall be known as "trafficking in cocaine." If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum terms of imprisonment of three calendar years and to pay a fine of $50,000.00.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of $100,000.00.

c. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of $250,000.00.

(3) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, four grams or more of any morphine, opium, or any salt, isomer, or salt of an isomer thereof, including heroin, as described is section 20-2-23(2) or section 20-2-25(1)a, or four grams or more of any mixture containing any such substance, is guilty of a felony, which felony shall be known as trafficking in illegal drugs." If the quantity involved:

a. Is four grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of $50,000.00.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 10 calendar years and to pay a fine of $100,000.00.

c. Is 28 grams or more, such person shall be sentenced to a mandatory term of imprisonment of 25 calendar years and to pay a fine of $500,000.00.

§20-2-81. Sentence not to be suspended, deferred, etc., prior to mandatory minimum term; reduction, suspension, etc., of sentence for assistance in identification, arrest, etc., of accessories, principals, etc.

(a) Notwithstanding the provisions of chapter 22, Title 15, with respect to any person who is found to have violated this article, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the man-

datory minimum term of imprisonment prescribed by this article.

(b) The prosecuting attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this article and who provides substantial assistance in the identification, arrest, or conviction of any of his accomplices, accessories, coconspirators, or principals. The arresting agency shall be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if he finds that the defendant rendered such substantial assistance.

APPENDIX B

RELEVANT ALABAMA COURT RULES

ALABAMA RULES OF APPELATE PROCEDURE

RULE 1. SCOPE OF RULES

These rules govern appeals to the Supreme Court, the Court of Civil Appeals, and the Court of Criminal Appeals, and proceedings on petitions for writs or other relief which these courts or judges thereof are empowered to grant. All cases appealable to the Court of Criminal Appeals shall be governed by those rules contained herein which are applicable to appeals to that court; and, pre-trial appeals by the state in criminal cases shall be governed also by the rules of criminal procedure providing for such appeals. These rules shall not be construed to extend or limit the

jurisdiction of these appellate courts as established by constitution or law. They shall be construed so as to assure the just, speedy, and inexpensive determination of every appellate proceeding on its merits.

RULE 3. APPEAL AS OF RIGHT-HOW TAKEN

(a) Filing the Notice of Appeal.

(1) In civil cases an appeal permitted by law as of right, or a review by certiorari in a workmen's compensation case, shall be taken to an appellate court by filing a notice of appeal with the clerk of the trial court, within the time allowed in Rule 4. The appellant shall cause a sufficient number of additional copies of the notice of appeal to be marked filed with the date of filing noted thereon and certified as a true copy by the clerk of the trial court

for service on the persons and parties as provided by (d)(1) of this rule. Appeals by permission from interlocutory orders shall be taken in the manner prescribed by Rule 5.

(2) In criminal cases, an appeal permitted by law as a matter of right to an appellate court shall be taken by filing a written notice of appeal with the clerk of the trial court within the time allowed by Rule 4, or by the defendant's giving an oral notice of appeal at the time of sentencing, which oral notice shall be noted of record; provided, that a pre-trial appeal by the state shall be taken by filing a written notice of appeal in the manner, and within the time, specified by the rules of criminal procedure providing for such appeals. The clerk of the trial court shall serve copies of the notice of

appeal on the persons specified by (d)(2) of this rule.

(b) Joint or Consolidated Appeals. If two or more persons are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the appellate court upon its own motion, or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) Form and Content of Notice of Appeal. The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and

shall name the court to which the appeal is taken. Such designation of judgment or order shall not, however, limit the scope of appellate review.

If the notice of appeal names the wrong appellate court to which the appeal is taken, such designation shall be treated as a clerical mistake and corrected accordingly. The necessary clerical steps shall be taken to docket the appeal and to file the record and briefs in the appropriate appellate court.

(d) Service of the Notice of Appeal.

(1) In civil cases, the clerk of the trial court shall serve a true copy of the filing notice of appeal, or any amendment thereto, as required in (a)(1) above, personally or by mailing a copy thereof to each of the following: the clerk of the appropriate appellate court;

the court reporter who reported the evidence; counsel of record for each adverse party, or, if an adverse party is not represented by counsel, to such party at his last known address. Service shall be sufficient notwithstanding the death of the party or his counsel. In civil cases the copy of the notice of appeal to the clerk of the appellate court will be accompanied by payment of the docket fee as provided in Rule 35A(1).

(2) In criminal cases, the clerk of the trial court shall serve notice of appeal, whether oral or written, upon each of the following: the clerk of the appropriate appellate court; the reporter who reported the evidence; the defendant; defendant's appellate counsel; the district attorney of the circuit in which the trial court is situated; and the Attorney General.

RULE 39. REVIEW OF DECISIONS OF COURTS OF APPEALS

(a) Method. Decisions of the courts of appeals may be reviewed by the supreme court upon petition for writ of certiorari only after the court of appeals has overruled an application for rehearing on the point, issue, or decision complained of, except that, in the case of a pre-trial appeal by the state in a criminal case, either party may petition for writ of certiorari without having first applied for a rehearing in the court of criminal appeals. Payment of the amount prescribed in Rule 35A(3) shall be made to the clerk of the supreme court at the time the petition for writ of certiorari is filed.

(b) Time. The petition for writ of

certiorari, with an accompanying brief, shall be filed with the clerk of the supreme court pursuant to Rule 25(a), within 14 days (2 weeks) after the decision of the court of appeals on the application for rehearing, except that in the case of a pre-trial appeal by the state in a criminal case, a petition for writ of certiorari must be filed within 7 days (1 week) of the judgment of the court of criminal appeals or within 7 days (1 week) of that court's order overruling an application for rehearing.

(c) Grounds. The petition for writ of certiorari to this court in a criminal case in which the death penalty was imposed as punishment shall be filed by counsel representing the petitioner on the appeal of the case, and will be granted as a matter of right. Unless

counsel who represented the appellant on the original appeal has been replaced by new or additional counsel, he shall prepare the petition for the writ of certiorari and file the same in accordance with these rules. If new or different counsel has been appointed to represent the appellant, it shall be his duty to prepare the petition for writ of certiorari and file the same in accordance with these rules. In all other cases, civil or criminal, petitions for writ of certiorari will be considered only:

(1) From decisions initially holding valid or invalid a city ordinance, a state statute or a federal statute or treaty, or initially construing a controlling provision of the Alabama or Federal Constitution;

(2) From decisions that affect a class

of constitutional, state or county officers;

(3) From decisions where a material question requiring decision is one of first impression in Alabama;

(4) From decisions in conflict with prior decisions of the Supreme Court or the courts of appeal; provided that when (4) is the basis of the petition, it must quote that part of the opinion of the appropriate court of appeals, and that part of the prior decision of the Supreme Court with which the conflict is alleged; or if the conflict is with a prior decision of the court of appeals, the conflicting passages must be quoted; or it shall state specifically and with particularity wherein such decision is in conflict; and,

(5) Where petitioner seeks to have controlling Supreme Court cases overruled

which were followed in the decision of the court of appeals.

(d) Form of Petition. The petition shall be on legal-size paper and shall contain:

(1) The style of the case (the same as in the court of appeals), the name of the petitioner, the circuit court from which the cause is on appeal, and the name of the court of appeals to which the petition for certiorari is directed;

(2) The date of the decision sought to be reviewed and the date of the order overruling the application for rehearing;

(3) A concise statement of the grounds, (c)(1)-(5), supra, on which the petition is based; and,

(4) A copy of the opinion of the court of appeals shall be attached to the

petition as an exhibit.

(e) Service. Nine copies of the petition and briefs shall be filed with the clerk of the Supreme Court, one copy with the clerk of the appropriate court of appeals, and one copy shall be served on each party to the proceeding in the court of appeals including those not joining in the petition.

(f) Briefs. Petitioner's brief shall be on the same size paper and bound as briefs for appeals and shall accompany the petition for writ of certiorari. No more briefs will be required of petitioner, although he may file an answering brief within 14 days (2 weeks) --or, in the case of a pre-trial appeal by the state in a criminal case, within 7 days (1 week)--after receipt of respondent's brief. Within 14 days (2

weeks)--or, in the case of a pre-trial appeal by the state in a criminal case, within 7 days (1 week)--after service of the petition and brief by petitioner, the respondent may file an initial brief limited solely to the issue of whether or not any of the grounds set forth in (c)(1)-(5) authorize the granting of a writ. Thereafter, if the writ should be granted, the respondent may file a subsequent reply brief addressed to the substantive issues presented for review on the petition for writ of certiorari, within 14 days (2 weeks)--or, in the case of a pre-trial appeal by the state in a criminal case, within 7 days (1 week)--after notice that the writ has been granted. Nine copies of the reply brief shall be filed with the clerk of the supreme court and one copy shall be served on the petitioner or his attorney.

No more shall be required of respondent.

The word "brief" as used in this rule includes an appendix where brief and appendix were employed by the party in the court of appeals.

(g) Action on Petition. If the court, upon preliminary consideration, concludes that there is a probability of merit in the petition and that the writ should issue, it shall be so ordered, of which due notice shall be given by the clerk to the parties or their counsel, and the clerk of the appropriate court of appeals. The record, one copy of the briefs, and appendices, if any, shall be transmitted to the clerk of the Supreme Court. The case shall stand for submission as herein provided.

(h) Oral Argument. There will be no oral argument on preliminary examination.

In the event the writ is granted, oral argument may be requested in writing by either party within 14 days (2 weeks)--or, in the case of a pre-trial appeal by the state in a criminal case, within 7 days (1 week)--after receiving notice of the granting of the writ. A copy of the request shall be served on the adverse party.

(i) Submission. If either party shall have made known a desire for oral argument, the clerk of the supreme court shall endorse that fact on the proper docket and, if oral argument is not determined under the criteria of Rule 34 to be unnecessary, shall set the case down for oral argument not less than 14 days (two weeks) after notifying the parties, or their attorneys or record, in writing of such setting. If neither

party shall have requested oral argument, as herein provided, or if the supreme court shall have determined oral argument to be unnecessary, the clerk of the supreme court shall, when briefs from all parties have been filed with him as herein provided, immediately submit the case upon the record, briefs, and appendices, if any.

(j) Rehearing. No application for rehearing shall be received in the Supreme Court if the petition for certiorari is denied.

(k) Scope of Review. The review shall be that generally employed by certiorari and will oridinarily be limited to the facts stated in the opinion of the particular court of appeals. If the petitioner is not satisfied with that statement of facts, he may, on

application for rehearing in that court, present any additional or corrected statement of facts and request that court to add or correct those facts in its opinion on rehearing. If the court fails to accede to this request, petitioner may copy the statement in the petition to this court, with references therein to the pertinent portions of the clerk's record and reporter's transcript, and it will be considered along with the statement of facts in the opinion of the appellate court, if found to be correct.

The application of the law to the stated facts is included in the scope of review.

In all cases in which the death penalty has been imposed, upon review of the opinion of the Court of Criminal Appeals on certiorari, the Supreme Court may notice any plain error of defect in

the proceeding under review, whether or not brought to the attention of the trial court, and take appropriate appellate action by reason thereof, whenever such error has or probably has adversely affected the substantial rights of petitioner.

RULE 40. APPLICATIONS FOR REHEARING

The application for rehearing may be made separately or may be included at the beginning of applicant's brief. All applications for rehearing, and the briefs supporting same, must be filed with the clerk of the court within 14 days (2 weeks) after the rendition of the judgment, except that in case of a pre-trial appeal by the state in a criminal case, any application for rehearing, with the supporting brief, must be filed with the clerk of the court within 7 days (1

week) after the rendition of the judgment. No party can, as a matter of right, apply for a rehearing unless a brief was filed with the clerk as provided by the rules. No brief opposing the application is required, but a brief from the opposing party may be filed within 14 days (2 weeks)--or, in the case of a pre-trial appeal by the state in a criminal case, within 7 days (1 week)--after the filing of the original application and brief. No second application for rehearing will be considered unless the rehearing reversed or substantially modified the original opinion of the court.

RULE 45A. SCOPE OF REVIEW IN DEATH CASES

In all cases in which the death penalty has been imposed, the Court of

Criminal Appeals shall notice any plain error or defect in the proceedings under review, whether or not brought to the attention of the trial court, and take appropriate appellate action by reason thereof, whenever such error has or probably has adversely affected the substantial right of the appellant.

RULE 45B. SCOPE OF REVIEW IN CASES OTHER THAN DEATH CASES

In those criminal cases in which the death penalty has not been imposed, the Court of Criminal Appeals shall not be obligated to consider questions or issues not presented in briefs on appeal.

CERTIFICATE OF SERVICE

I, Joseph G. L. Marston III, an Assistant Attorney General of Alabama, a member of the Bar of the Supreme Court of the United States and one of the Attorneys for the State of Alabama, hereby certify that on this _____ day of September, 1986, I did serve the requisite number of copies of the foregoing on the Attorney for Richard M. Maddox, Vickie Ellen Callahan, and Gary Dean Gillum, Petitioners, by mailing the same to said attorney, first-class postage prepaid and addressed as follows:

Honorable David Cromwell Johnson
Attorney at Law
300 21st Street, North
Birmingham, Alabama 35203

_____
JOSEPH G. L. MARSTON III
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